



EUROJUST reform - Article 85 TFEU

Practical Case Analysis

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- Romanian organised crime group with 'expertise developed' in stealing informatic equipments from brand new buildings before their opening
- Taking advantage of lack or very low security in place during that time frame
- Buildings located in industrial zones, very close to highways
- Stolen equipments stored in garages rented in Germany
- Stolen equipments sold and proceeds of crime laundered in Romania

The facts

- Countries involved: LU, DE, RO, FR, BE, NL, AT
- Victims in: LU, FR, BE, NL (possibly also in UK and DK)
- Suspects arrested in: LU, FR, NL, BE
- Involvement of Europol in the case

The case

- Arrested people in France were about to be released
- House search conducted in their premises before arriving home in DE Level 2 between LU and DE
- Successful house search:
 - Rental contracts of garages found
 - Stolen equipments hidden in garages found

A first successful intervention at Eurojust



- Countries attending the coordination meeting: LU, RO, FR, DE, BE, AT, NL, and Europol
- Proposals made by the LU investigating judge:
 - Setting up a common database on stolen and recuperated equipments in all countries involved with a view to (eventually) restituting victims/insurance companies
 - Setting up a common database on DNA profiles with a view to identifying possible matches between arrested and material on equipment
 - Temporary surrender of persons within EAWs

- Proposals made by the LU investigating judge (continued):
 - Conflicts of jurisdiction and transfer of proceedings to a Member State
 - Setting up a Joint Investigation Team (JIT)
 - For one country start an investigation
- Result of the coordinating meeting: no agreement reached on the issues discussed

- Setting up a common database on stolen and recuperated equipments - Article 6(1)(a)(vii)
- Setting up a common database on DNA profiles – Article 6(1)(a)(vii)
- Temporary transfer of persons - Article 6(1)(a)(iii)
- Resolution of conflicts of jurisdiction and transfer of proceedings to a Member State - Article 6(1)(a)(ii) and Article 7(2)

- Setting up a Joint Investigation Team (JIT) – Article 6(1)(a)(iv)
- Undertake an investigation - Article 6(1)(a)(v)
- OCC
- Importance of new Article 8: Should national authorities decide not to comply with a request or opinion, they shall inform Eurojust of their decision and of the reasons for it

- The powers referred to in Article 9c may be exercised in agreement with a competent national authority, or at its request and on a case-by-case basis
 - Setting up a common database on stolen and recuperated equipments - Article 9c(c)
 - Setting up a common database on DNA profiles - Article 9c(c).
 - Temporary transfer of persons - Article 9c(a)
 - Resolution of conflicts of jurisdiction and transfer of proceedings to a Member State – Article 9c(a)
 - Setting up a Joint Investigation Team (JIT) - Article 9f
 - Undertake an investigation – Article 9c

(Insufficient/limited) powers to carry out tasks
under the new Decision

- Initiation of criminal investigations and proposing the initiations of prosecution
- Coordination of investigations and prosecutions
- Resolution of conflicts of jurisdiction

Article 85 TFEU

- Would the implementation of Article 85 TFEU help solving cases such as the one described above?
 - Would the “quality change” resulting from the new Treaty – i.e. the granting of direct operational powers – be enough?
 - Effective follow-up to initiation is crucial
- How would EUROJUST practically “initiate” investigations?
 - Through its NMs or via a decision of the College?
 - In the case described above, what if NMs for NL, ES and FR have different views?

Perspectives offered by Article 85 TFEU
Questions without answers... (1)

- Respective roles of Eurojust /national authorities during the “life” of the case:
 - Possibility to propose prosecutions
 - Reinforcement of the role of coordination (Article 85(1)(b))
 - Limit of Article 85(2): formal acts performed by competent national officials. Intervention of NMs as “national officials”?

Perspectives offered by Article 85 TFEU
Questions without answers... (2)

- Operational issues
- Structural issues
- Parliamentary Control issues

GHK Study (1)

- Minimalist Scenario
- Intermediate Scenario
- Maximalist Scenario

GHK Study (2)

- Initiation
 - NMs participation under the lead of MS, others than their own, in investigation and prosecution
 - Eurojust to order investigative measures
 - Autonomous investigative power as Eurojust
- Coordination and cooperation
 - Systematic follow-up of coordination meetings
- Conflicts of jurisdiction
 - Jurisdiction to investigate and to prosecute
 - Positive conflicts
 - Negative conflicts
 - Develop and apply legally binding concepts, criteria and procedure for examining and resolving conflicts of jurisdiction

Maximalist Policy Options

Thank you for your attention!

